

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FAIRHAVEN HEALTH, LLC,

Plaintiff,

v.

BIOORIGYN, LLC, JOANNA
ELLINGTON, AKA JOANNA CLIFTON,
AND DENNIS CLIFTON,

Defendants.

Case No. 2:19-cv-01860-RAJ

**ORDER DENYING MOTIONS
TO SEAL WITHOUT
PREJUDICE**

This matter comes before the Court on the parties' motions to seal. Dkt. ## 38, 45, 51, 57. Previously, the Court dismissed Plaintiff Fairhaven Health LLC's complaint with leave to amend. Dkt. # 37. Since then, Fairhaven amended its complaint, Dkt. # 40, Defendants moved to dismiss the amended complaint, Dkt. # 46, and Fairhaven opposed the motion, Dkt. # 52. The motion is now fully briefed. Dkt. ## 46-47, 52-56. Through the instant motions to seal, the parties seek to seal both the amended complaint and their motion to dismiss briefing and declarations. Dkt. ## 38, 45, 51, 57. The motions to seal are unopposed.

"Historically, courts have recognized a 'general right to inspect and copy public

1 records and documents, including judicial records and documents.” *Kamakana v. City &*
2 *Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner*
3 *Comm’n, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when a court considers a
4 sealing request, “a strong presumption in favor of access is the starting point.” *Id.* at
5 1178 (internal quotation marks omitted).

6 “[C]ompelling reasons’ must be shown to seal judicial records attached to a
7 dispositive motion.” *Id.* at 1179. That is, the party seeking to seal a judicial record must
8 show that “compelling reasons supported by specific factual findings . . . outweigh the
9 general history of access and the public policies favoring disclosure.” *Id.* at 1178-79.
10 Compelling reasons may exist when court records “become a vehicle for improper
11 purpose,” such as using the records “to gratify private spite, promote public scandal,
12 circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon*, 435
13 U.S. at 598).

14 Additionally, in the Western District of Washington, parties moving to seal
15 documents must comply with the procedures established by Civil Local Rule 5(g). Under
16 that rule, the party who designates a document confidential must provide a “specific
17 statement of the applicable legal standard and the reasons for keeping a document under
18 seal, including an explanation of: (i) the legitimate private or public interest that warrant
19 the relief sought; (ii) the injury that will result if the relief sought is not granted; and
20 (iii) why a less restrictive alternative to the relief sought is not sufficient.” W.D. Wash.
21 Local Rules LCR 5(g)(3)(B).

22 The policy and presumption in favor of public access is weighty; the parties have
23 not overcome that presumption. Both parties posit that the underlying documents to be
24 sealed are confidential and proprietary. *See, e.g.*, Dkt. # 45 at 1-2, Dkt. # 51 at 3. The
25 records, they say, contain “intellectual property strategies, product formulations and
26 specifications, manufacturing details, and business strategy.” *See, e.g.*, Dkt. # 45 at 1-2,
27 Dkt. # 51 at 3. The Court has reviewed the documents and generally agrees with their

1 characterization.

2 Yet their explanation of “the injury that will result if the relief sought is not
3 granted” is lacking. W.D. Wash. Local Rules LCR 5(g)(3)(B)(ii). Their allegations of
4 harm are broad and unsubstantiated by specific examples or articulated reasoning.
5 Fairhaven’s argument is conclusory and measures one sentence long: “Disclosure of this
6 information could substantially harm Plaintiff’s ability to compete with its competitors
7 and maintain a viable and profitable business.” Dkt. # 51 at 3; Dkt. # 38 at 4.
8 Defendants, on the other hand, do not identify any harm at all. Dkt. # 45. This fails to
9 show “compelling reasons” why the documents should be sealed.

10 What is more, the Court sees no explanation from the parties about “why a less
11 restrictive alternative to the relief sought is not sufficient.” W.D. Wash. Local Rules
12 LCR 5(g)(3)(B)(iii). This is especially troubling given that the parties seek to file their
13 briefs and supporting documents completely under seal. Dkt. ## 46-47, 52-56. The
14 Court strongly prefers redacting documents to filing them completely under seal. The
15 declarations and exhibits may well contain enough confidential and proprietary
16 information to make applying individual redactions impractical. But the parties have not
17 explained if that is the case or, at the very least, why a less restrictive alternative is
18 insufficient. As for the underlying briefs themselves, the Court doubts that redactions of
19 confidential portions would be insufficient and advises the parties to file a public,
20 redacted version accordingly.

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28 ORDER – 3

1 For the reasons stated above, the Court **DENIES** the parties' motions to seal (Dkt.
2 ## 38, 45, 51, 57) **without prejudice to refile**.¹ Within 14 days of this Order, the
3 parties may refile their motions to address the shortcomings identified above. If they do
4 not, the Court may direct the Clerk to unseal the sealed documents.

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6 DATED this 22nd day of September, 2021.

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11 The Honorable Richard A. Jones
12 United States District Judge
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26 ¹ Defendants filed their reply brief and a supporting declaration under seal. Dkt. ## 55,
27 56. They have not, however, moved to seal those documents. If Fairhaven does not
28 move to seal those documents **within 14 days of this Order**, the Court may direct the
Clerk to unseal the documents.